

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

STATE ex rel. CHRIS KOSTER,

Plaintiff,

v.

PREMIUM STANDARD FARMS,
INC.,

Defendant.

Case No. 02CV217957

JUDGMENT EXTENDING CONSENT JUDGMENT

WHEREAS, in early 1999, the State of Missouri ("Plaintiff") filed a petition ("First Petition") against Premium Standard Farms, Inc. ("PSF") entitled STATE ex rel. JEREMIAH W. (JAY) NIXON, and the MISSOURI CLEAN WATER COMMISSION, Plaintiff. v. PREMIUM STANDARD FARMS, INC., Defendant, and bearing Case No. 99CV-0745 ("First Lawsuit");

WHEREAS, the petition in the First Lawsuit alleged violations of various federal and State environmental laws involving wastewater spills and discharges at a number of PSF's Missouri swine farms;

WHEREAS, Plaintiff amended the Petition to add Continental Grain Company ("CGC") as a defendant due to CGC's contractual relationship with PSF whereby CGC served as a grower for PSF;

WHEREAS, on August 9, 1999, the parties settled the First Lawsuit with the entry of a Consent Judgment ("First Consent Judgment");

WHEREAS, the First Consent Judgment required PSF and CGC (collectively, "Defendants") to undertake a two-tier Capital Improvement Program to research, develop, and implement next generation waste handling/environmental control technologies ("Next Generation Technology") at their Missouri swine operations and to expend a total of \$25 million on the Capital Improvement Program over a five-year period beginning May 19, 1999;

WHEREAS, the First Consent Judgment provided for the appointment of a three-member management advisory team ("Team").

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WHEREAS, the First Consent Judgment required Defendants to research, develop, and implement next generation waste handling/environmental control technologies ("Next Generation Technology" or "NGT") at their Missouri swine Operations. Next Generation Technology was defined as an improved waste-handling and storage system designed to reduce or eliminate the release or threatened release, discharge or emission of contaminants, odor and/or pollutants from all barns farms, lagoons and wastewater application acreage and associated appurtances for the handling, storage, treatment, transportation and application of wastewater, to the fullest possible extent consistent with the financial commitment contained in the First Consent Judgment;

WHEREAS, on June 4, 2002, Plaintiff filed a second Petition against Defendants alleging certain violations of the Missouri Clean Water Law involving wastewater spills and discharges occurring since the First Consent Judgment was entered, and bearing Case No. 02CV217957 ("Second Lawsuit");

WHEREAS, on February 24, 2004, the parties settled the Second Lawsuit with the entry of a consent judgment ("Second Consent Judgment"). The Second Consent Judgment expressed the parties' intent that the First Consent Judgment, as modified, and the Second Consent Judgment be harmonized to the fullest extent possible;

WHEREAS, the Second Consent Judgment recited the "substantial results"¹ produced by the process established by the First Consent Judgment, "including reducing by more than 90 percent the use of traveling irrigation sprayers, the successful testing and implementation of numerous scientifically advanced technologies that had not previously been applied to agricultural waste management, extensive useful air quality data collection and analysis, and detailed water quality sampling and analysis, all leading to a superior and advanced swine waste management system"²;

WHEREAS, the Second Consent Judgment also recited that "Defendants have invested more than \$12 million in research, development, implementation, and monitoring of new technologies"³ since the Next Generation Technology process began in 1999, and that while "it would be possible for the Defendants to expend the balance of their \$25 million obligation in accordance with the original schedule, the only means for doing so would be installing technologies with less capability of reducing the risk of environmental impacts than an approved technology such as Water Reuse or Crystal Peak"⁴;

¹ Second Consent Judgment, at 2.

² Id.

³ Id. at 3.

⁴ Id.

WHEREAS, the Second Consent Judgment further recited that while “the research and development of Next Generation Technology has proceeded expeditiously with due diligence to ensure the selection and implementation of the best, most feasible and most reasonably practical alternatives”⁵, the Defendants wished to devote more time to the Next Generation Technology development process and Plaintiff desired to ensure that “the most protective and scientifically possible technology [is] installed”⁶ at Defendants’ farms.

WHEREAS, the Second Consent Judgment eliminated the \$25 million cap on expenditures, required Defendants’ to install Next Generation Technology, as determined by the Team, at their 11 identified Missouri Class 1A farms, and established a July 31, 2010, deadline for implementing Next Generation Technology on these farms. The Second Consent Judgment also required implementation of Next Generation Technology at any company-owned Class 1A animal feeding operation acquired or constructed prior to the termination of the Second Consent Judgment;

WHEREAS, on May 7, 2007, CGC sold its Missouri swine farms;

WHEREAS, Premium Standard Farms, LLC, is a successor to the original Defendant Premium Standard Farms, Inc. (as used hereafter, “PSF” shall refer to both entities);

WHEREAS, since entry of the Second Consent Judgment, the Next Generation Technology process has focused on (1) implementation of the Crystal Peak Fertilizer (“CPF”) process as Next Generation Technology at the Valley View farm, (2) development and implementation of permeable lagoon covers and Advanced Nitrification/De-nitrification (“AND”) Technology as Next Generation Technology at the remaining ten Class 1A farms, and (3) development of barn odor control technology as NGT for all Class 1A farms. Permeable lagoon covers have been installed on the primary lagoons at all of PSF’s Missouri Class 1A farms and AND Technology has been installed and is operating on seven of the Class 1A farms;

WHEREAS, since the entry of the First Consent Judgment, PSF substantially complied with its obligations under the First and Second Consent Judgments by the implementation of advanced land application techniques, installation of lagoon covers, implementation of AND and CPF at eight farms, development of barn scrapers and STS, proposing and testing at least eighteen different technologies that have been evaluated by the Advisory Team, as well as evaluating dozens of other products or technologies.

⁵ Id.

⁶ Id.

WHEREAS, the remaining tasks under the First and Second Consent Judgments are (1) installation of the AND Technology or STS on the three Non-AND/CPF Farms that are presently operating without either the CPF process or the AND Technology, and (2) implementation of barn odor control technology at all Barn Sets identified by the Team as requiring odor control. PSF will have fulfilled its Next Generation Technology construction obligations when these tasks are constructed and operational;

WHEREAS, the Advisory Team has recognized that "Odor has also proven to be the most challenging aspect of not only the Consent Judgment process, but one of the greatest challenges for Concentrated Animal Feeding Operations nationwide."⁷;

WHEREAS, the Team determined that AND combined with an acceptable barn odor technology constitutes Next Generation Technology⁸ and recommended specific barns on which barn odor control technology should be installed⁹;

WHEREAS, on April 19, 2010, the Advisory Team gave its approval for a barn odor component of NGT to the barn scraper technology developed by PSF, when combined with AND Technology or the CPF process.¹¹ At the same time, the Advisory Team gave NGT approval to the Sustainable Technology System ("STS") developed by PSF.¹² Both approvals were conditioned on submission of supplemental information that PSF subsequently supplied¹³;

WHEREAS, although the Second Consent Judgment required installation of Next Generation Technology at all Class 1A farms by July 31, 2010, in 2008, the Team proposed a schedule for installation of barn odor control systems that extended beyond the deadline of the Consent Judgment, with full installation to be completed by December

⁷ Next Generation Technology (NGT) Determinations Regarding the Sustainable Technology System, Barn Scraper Systems, Vegetative Environmental Buffers, and Biofilter Technology, Submitted By: Management Advisory Team (Team) Monday, April 19, 2010 ("April 19, 2010 Determinations").

⁸ Minutes of Premium Standard Farms Management Advisory Team Decision and Recommendation Meeting, June 2 and 3, 2008

⁹ Minutes of May 12 and 13, 2004 Advisory Team meeting

¹¹ April 19, 2010 Determinations

¹² Id.

¹³ Next Generation Technology (NGT) – Resolution of Operational Considerations, Submitted by: Management Advisory Team (Team), Monday, May 17, 2010 ("May 17, 2010 Determinations").

2012.¹⁴ The Team later stated that it would not comment on schedules extending past the July 31, 2010 deadline unless requested by the parties, as the Team recognized that a schedule beyond July 31, 2010 was subject to negotiation between PSF and the State¹⁵;

WHEREAS, PSF did not install AND Technology or STS at Non-AND/CPF Farms by the July 31, 2010, deadline in the Second Consent Judgment and did not install barn odor control technologies at Barn Sets identified by the Team as requiring odor control by the July 31, 2010, deadline in the Second Consent Judgment;

WHEREAS, PSF has requested that the July 31, 2010, deadline be extended to give it time to complete its ongoing installation of barn scrapers;

WHEREAS, PSF has requested that the July 31, 2010, deadline be extended to give PSF time to construct the AND Technology or STS at Non-AND/CPF Farms;

WHEREAS, the purpose of this Consent Judgment is to facilitate an expeditious completion of the Next Generation Technology installation process by establishing an aggressive, enforceable schedule for implementation of the barn scraper technology on the AND/CPF Farms and by reducing hog populations at the Non-AND/CPF Farms to levels applicable to Class 1B CAFOs pending installation of scrapers and AND Technology or STS as NGT on these farms;

NOW THEREFORE, in consideration of the foregoing good cause and for the undertakings and covenants hereinafter designated, it is hereby ORDERED, ADJUDGED and DECREED that the deadline in the second consent judgment entered by the court on February 24, 2004 is hereby extended by the agreement of the parties under the terms and conditions set forth herein:

I. Jurisdiction and Venue

1. This matter involves a Consent Judgment entered in Jackson County Circuit Court. This Court has jurisdiction over the subject matter herein and of the parties consenting hereto pursuant to § 478.070, RSMo (2000).¹ Venue is proper in this court.

¹⁴ Final Minutes/Recommendations – Team Meeting, November 24-25, 2008.

¹⁵ May 17, 2010 Determinations.

¹ All statutory references shall be to the Missouri Revised Statute 2000 unless specifically stated otherwise.

II. Parties Bound

2. The provisions of this judgment shall be binding upon the parties to this action as well as their agents, servants, employees, heirs, successors, assigns, and to all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of the parties to this action or their agents, servants, employees, heirs, successors, and assigns.

III. Satisfaction and Reservation of Rights

3. The parties, acknowledging that PSF was unable to implement all of the Next Generation Technology approved by the team prior to the July 31, 2010 deadline of the Second Consent Judgment and the August 31, 2010 extended deadline agreed to by the parties, jointly request the Court to enter this Judgment Extending Consent Judgment.

4. Upon completion of all terms of this Consent Judgment, including the payment of all sums as required herein, the installation of all required technology and that said technology is operational, unless PSF no longer holds a Class 1A permit for any farm that has not had all required technology implemented, Defendant is relieved of liability for the violations alleged in the First and Second Petitions. Before PSF may reapply for a Class 1A permit lost pursuant to these provisions, PSF must install and operate the NGT required by this Consent Judgment.

5. This Consent Judgment shall not be construed to limit the rights of the Plaintiffs to obtain penalties or injunctive relief under any Missouri environmental law or implementing regulations, or under other federal or state laws, or regulations, except as

expressly stated in the preceding paragraph of this Consent Judgment. Without limiting the foregoing, the parties expressly agree that:

a. Nothing in this Consent Judgment shall prevent Plaintiff from applying to this Court for further orders or relief if violations of this Consent Judgment occur.

b. Nothing in this Consent Judgment shall preclude Plaintiff from seeking equitable or legal relief for violations of any Missouri environmental law or regulations promulgated under the authority of any such law.

c. The State reserves the right to bring an action against Defendant based on facts or events occurring after, or facts unknown to the State as of, the date of this Consent Judgment. Provided, however, in the event that Defendant is in full compliance with the material terms of this Consent Judgment and provided there are no material adverse changes to Defendant's Operations, the State agrees that it shall not claim or seek an order that Defendant's Operations be declared a public nuisance for the duration of this Consent Judgment. Nothing contained in this Consent Judgment shall be construed to limit any third party's right to bring an action against Defendant asserting any claim for relief. Further, nothing contained in this Consent Judgment shall be construed to limit any third party's right to bring any common law action against Defendant.

d. The State of Missouri further reserves all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by Defendant or its

facilities, whether related to the violations addressed in this Consent Judgment or otherwise.

IV. Application and Scope

6. The requirements contained herein apply to all of Defendant's Missouri farms identified in this Consent Judgment and impose Next Generation Technology obligations on the operations at the AND/CPF farms and the Non-AND/CPF farms as well as on the operations at any company-owned Class 1A animal feeding operation acquired or constructed prior to termination of this Consent Judgment.

7. This Consent Judgment supersedes and replaces the First and Second Consent Judgments.

V. Definitions

8. The following definitions apply to this Consent Judgment only.

9. "AND/CPF Farms" means Badger/Wolf/Brantley, Green Hills, Homan, Ruckman, South Meadows, Valley View, Whitetail and Terre Haute farms.

10. "AND Technology" means an advanced nitrification and denitrification wastewater treatment system that has been approved by the Team as partially meeting the definition of Next Generation Technology.

11. "Barn Set" means a set of eight or fewer barns that is connected in such a manner that they are physically adjacent and has some or all aspects of their operation physically connected, including typically sharing a primary lagoon. The term is used in the same manner, and has the same meaning, as has been used by the Team in its determinations.

12. "CAFO" means confined animal feeding operation.
13. "Class 1A CAFO" has the same meaning as defined in 640.703, RSMo.
14. "Class 1B CAFO" has the same meaning as defined in 640.703, RSMo.

For purposes of this Consent Judgment, a Class 1B CAFO shall contain no more hogs than the number allowed by applicable law for a Class 1B.

15. "CPF Process" means the Crystal Peak Fertilizer process on the Valley View farm previously approved as NGT by the Team.

16. "Defendant," and "PSF" mean Premium Standard Farms, LLC, and its agents, servants, employees, heirs, successors, assigns, and all persons, firms, corporations and other entities who are, or who will be, acting in concert or privity with, or on behalf of PSF, or its agents, servants, employees, heirs, successors, and assigns.

17. "Department" means the Missouri Department of Natural Resources.

18. "Next Generation Technology" or "NGT" means, in any determination following the entry of the Consent Judgment, an improved manure-handling and storage system (1) designed to reduce or eliminate the release or threatened release, discharge or emission of contaminants, odor and/or pollutants to the fullest possible extent; and (2) that is at least as protective to human health and the environment as applicable standards imposed by state, federal or local statutes, regulations, or ordinances. Consistent with both federal and Missouri water pollution control laws and related regulations, the Next Generation Technology will continue to incorporate a no-discharge design. Any technology

previously approved by the Team as Next Generation Technology shall continue to be Next Generation Technology for purposes of this Consent Judgment.

19. "Non-AND/CPF Farms" means Somerset, Locust Ridge, and Hedgewood farms.

20. "Operations" means all barns, farms, lagoons and wastewater application acreage and associated appurtenances for the handling, storage, treatment, transportation and application of wastewater.

21. "Scrapers" means the mechanical device designed to scrape manure from the subfloor of barns at Defendant's Missouri farms in accordance with the requirements of all Team NGT determinations.

22. "STS" means the Sustainable Technology System incorporating a digester and scrapers previously approved as NGT by the Team.

23. "Team" means the Management Advisory Team originally created pursuant to the First Consent Judgment.

VI. Next Generation Technology Implementation Schedules

24. Defendant shall reduce the hog population at its Non-AND/CPF Farms in accordance with the following requirements:

- a. No later than June 1, 2012, Defendant shall sufficiently reduce the number of hogs at its Non-AND/CPF Farms to at or below the level required for Class 1B CAFOs and maintain each of these farms at or below this level until either AND or STS and scrapers or other technology approved by the Team as NGT is installed.

b. Defendant will reduce the population of these farms by closing Barn Sets in a manner that minimizes the number of operating Barn Sets rather than reducing the number of hogs per barn.

c. Priority will be given to depopulating the following barns sets at the earliest opportunity: Barn Sets 3, 5, 6, 7, 9 at the Locust Ridge farm, Barn Sets sse, ssr, sss, ssu, ssv at the Somerset farm and Barn Set 1 at the Hedgewood farm. After one year from the date of entry of this Consent Judgment, at least eight of these barn sets will be empty at all times. One year after the entry of this Consent Judgment, PSF shall provide the Department and the Attorney General's Office with a list of those barn sets that have been emptied pursuant to this paragraph. Thereafter, within seven days of any change as to which eight barn sets has been emptied, PSF shall provide an updated list of emptied barn sets to the Department and the Attorney General's Office.

25. Defendant shall install Scrapers at the AND/CPF Farms in accordance with the following requirements.

a. All construction shall be completed in accordance with all NGT determinations made by the Team.

b. If Defendant fails to complete installation and operation of scrapers in accordance with all NGT determinations made by the Team and repopulation to the level of a Class 1A CAFO at the Whitetail Farm by June 30, 2011, Defendant must apply for and receive a new operating permit in accordance with, and subject to, all applicable laws and regulations in place at the time of that application. If

applying for a Class 1A operating permit pursuant to this subparagraph, Whitetail Farm shall not be considered an existing operation for purposes of 10 CSR 20-6.300(3)(B).

c. Schedule: Defendant shall install scrapers at the Barn Sets identified by the Team at all current AND/CPF Farms, with the exception of Badger/Wolf/Brantley. These Barn Sets consist of :

- | | |
|--|--|
| • Green Hills | 10, 11 |
| • Homan | 17, 18, 19, 20, 21, 22, 23 |
| • Ruckman | 9, 10, 11, 12, 13, 14, 15, 16, 27 |
| • South Meadows | 1, 2, 3, 4, 5, 6, 7 |
| • Valley View | 2, 5, 7 |
| • Whitetail | 1, 2, 3, 4, 5, 6, 7, 8, 10 |
| • Terre Haute
Nursery, Cooley Nursery | 1, 2, 5, 6, 7, 11, 13, 14, Terre Haute |

The barns shall be installed in accordance with the following schedule:

- i. By December 31, 2010, Defendant shall have installed scrapers in at least 48 barns.
- ii. By July 31, 2011, Defendant shall have installed scrapers in at least 136 barns.
- iii. By December 31, 2011, Defendant shall have installed scrapers in at least 230 barns.
- iv. By July 31, 2012, Defendant shall have installed scrapers in all barns at all Barn Sets identified by the Team as requiring barn odor control.

d. Upon installation of scrapers in any barn, Defendant shall cease operation of the flush systems in that barn.

e. Defendant will provide to the Plaintiff a list of all barns in which scrapers have been installed on each of the dates set forth in subparagraph c above. If Defendant elects to close a barn set rather than install the scraper system, it shall notify Plaintiff of that election and shall not repopulate that barn set until scrapers have been installed. Any barns that Defendant elects to close rather than install scrapers within shall not be counted toward completion of the interim milestones in subparagraphs c.i through c.iii above.

26. Defendant shall construct, operate and maintain all farms in accordance with this Consent Judgment and all NGT determinations made by the Team, and those determinations are incorporated into this Consent Judgment by reference as though fully rewritten herein. These determinations include but are not limited to the April 19, 2010 Determinations, attached as Exhibit 1, and the May 17, 2010 Determinations, attached as Exhibit 2.

VII. Voluntary Payments

27. As a part of its continuing commitment to the communities in which it operates, within 45 days of the signing of this Judgment, PSF will pay the sum of One Million Dollars (\$1,000,000.00) as follows:

- a. One Hundred Thousand Dollars (\$100,000.00) shall be paid to each of the following:

- i. County Treasurer of Gentry County as Trustee for the Gentry County School Fund;
- ii. County Treasurer of Daviess County as Trustee for the Daviess County School Fund;
- iii. County Treasurer of Mercer County as Trustee for the Mercer County School Fund;
- iv. County Treasurer of Sullivan County as Trustee for the Sullivan County School Fund;
- v. County Treasurer of Putnam County as Trustee for the Putnam County School Fund.

b. A total of Five Hundred Thousand Dollars (\$500,000.00) shall be paid to the county road funds of the following counties in the amounts indicated: Daviess (\$90,000), Gentry (\$90,000), Grundy (\$50,000), Mercer (\$90,000), Putnam (\$90,000); and Sullivan (\$90,000).

VIII. Stipulated Payments

28. Defendant will be liable for stipulated payments for each failure to comply with any requirement in this Consent Judgment, or any requirement in any approved plan. For barn activities identified in paragraphs 24 and 25, above, the Payment for violations shall be calculated pursuant to the following table:

Period of Noncompliance

Payment Per Barn Set
Per Violation Per Day

1 st to 30 th Day	\$2,000.00
31 st to 60 th Day	\$4,000.00
After 60 Days	\$6,000.00

If more than one Barn Set is out of compliance, the daily penalty shall be multiplied by the number of Barn Sets out of compliance. Every barn in a Barn Set must be in compliance with the applicable requirement or the Barn Set is not in compliance.

Payment for any and all other violations shall be calculated pursuant to the following table:

Period of Noncompliance

Payment Per Day Violation

1 st to 30 th Day	\$1,000.00
31 st to 60 th Day	\$2,000.00
After 60 Days	\$3,000.00

29. Stipulated payments shall be due and payable within ten days of demand being made by the Attorney General's Office. The demand will identify the location of the violation. Defendant shall pay the stipulated payment to the credit of the Natural Resources Protection Fund, Water Pollution Fee Subaccount by check made payable to the "Natural Resources Protection Fund, Water Pollution Fee Subaccount." The stipulated payment shall be mailed, along with a copy of Plaintiff's stipulated payment demand letter, to: Collections Specialist, Missouri Attorney General's Office, P.O. Box 899, Jefferson City, MO 65102-0899.

30. The inclusion of stipulated payments provisions in this Consent Judgment, and the payment of stipulated payments, does not limit the State's ability to pursue other payments or penalties for the same acts in accordance with State or federal law.

IX. Force Majeure

31. Defendant agrees to perform all requirements under this Consent Judgment within the time limits established under this Consent Judgment, unless the performance is delayed by a force majeure event. For purposes of this Consent Judgment, a force majeure event is defined as any event arising from act of God, war, strike, riot, or other catastrophe not foreseeable and beyond the control of Defendant or of any entity controlled by Defendant, including but not limited to, its consultants, contractors, subcontractors or agents, that delays or prevents performance of any obligation under this Consent Judgment despite Defendant's best efforts to fulfill the obligation. Force majeure does not include financial inability to complete the work, unanticipated or increased costs of performance, normal precipitation events, changed economic circumstances or failure to apply for federal, state or local permits to the extent such are required. Force majeure does include, but is not limited to, the inability to perform any work because such work would be inconsistent with any order entered by any court or because such work would be in conflict with the requirements of other regulatory agencies with jurisdiction over this Site.

32. Defendant shall notify the Department orally as soon as practicable, and shall also notify the State in writing within fourteen (14) days after Defendant becomes aware of events that constitute a force majeure. Such notice shall identify the event

causing the delay or anticipated delay; estimate the anticipated length of delay, including necessary demobilization and re-mobilization; state the measures taken or to be taken to minimize the delay; and estimate the timetable for implementation of the measures.

33. Defendant shall exercise its best efforts to avoid and minimize any delay caused by a force majeure event. Failure to comply with the notice requirements of this Section (Force Majeure) shall waive any claim of force majeure by Defendant.

34. If the State determines a delay in performance of a requirement under this Consent Judgment is or was attributable to a force majeure, the State will notify Defendant of this determination in writing, and the time period for performance of that requirement shall be extended as deemed necessary by the State. Such an extension, of itself, shall not alter Defendant's obligation to perform or complete other tasks required by this Consent Judgment that are not directly affected by the force majeure event.

35. If the State does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, the State will notify Defendant in writing of its decision. Defendant may elect to dispute the State's decision by invoking the Dispute Resolution provisions herein.

X. Dispute Resolution

36. In the event of a dispute over the meaning of any of the terms of this Consent Judgment or a decision by the state to deny a force majeure request:

- a. Any party may invoke the Dispute Resolution provisions of this Section by notifying the other party in writing of the matter(s) in dispute and of

the party's intention to resolve the dispute under this Section. The parties shall attempt to resolve the dispute informally for a period of thirty (30) days.

b. If the parties are unable to resolve the dispute through informal negotiation, either party may invoke formal Dispute Resolution through mediation. Mediation shall be conducted pursuant to Missouri Supreme Court Rule 17. The parties will agree on a mediator. In the absence of agreement, and within fourteen (14) days of the request to mediate, the parties will jointly request this Court to select a mediator. The parties agree to mediate all disputes in good faith. The mediation process shall commence within two (2) weeks of the selection of a mediator and the parties shall use their best efforts to conclude the mediation process within four (4) weeks of commencement. In the event mediation fails to resolve the dispute, the state's position shall stand unless PSF seeks judicial resolution of the dispute in this Court.

c. Any petition to the Court following mediation must be initiated by filing a motion with the Court asking the Court to resolve the dispute. Defendant shall have the burden of proof. The motion shall describe the dispute, state that the party filing the motion has made a diligent, good faith effort to resolve the dispute through informal negotiation and formal Dispute Resolution, describe the result of the formal Dispute Resolution, and include a proposal for resolving the dispute.

d. The invocation of the Dispute Resolution procedures under this Section shall not extend, postpone or affect any obligation of PSF under this

Consent Judgment unless expressly provided herein or unless the parties agree to the extension, postponement, or effect. If applicable, stipulated penalties with respect to the disputed matter shall continue to accrue, but payment shall be stayed pending resolution of the dispute. In the event PSF does not prevail on the disputed issue, stipulated penalties, if applicable, shall not be excused and shall be deemed to have accrued from the date any violation commenced. However, in the event that PSF prevails on the disputed issue, stipulated penalties, if applicable, shall not be assessed for the disputed issue. In addition, PSF shall not be liable for a stipulated penalty for any period in which the Court determines that the delay is attributable to Plaintiff or any other agency of the state of Missouri.

e. Nothing in this Consent Judgment, including these dispute resolution provisions, limits the state's authority to seek immediate relief in this Court for violations of this Consent Judgment or state law.

37. The parties recognize that during the course of any dispute subject to dispute resolution or during any court action relating to this Consent Judgment, it may be necessary to seek the assistance, input or testimony from the Team in determining the application of any Team determinations. Defendant shall compensate Team's voting members for their reasonable fees for actual time expended and for actual and necessary expenses incurred in connection with the Team's work. Team members shall submit all invoices and requests for reimbursement to John K. McManus, Division Chief, Agriculture and Environment Division, or his successor, who shall review and forward approved invoices and requests to Defendant for payment. Defendant may make an

independent determination whether to pay invoices or requests approved by Mr. McManus or his successor. Any dispute arising over the payment of invoices may be brought before the Court, where Defendant shall have the burden of proving by a preponderance of the evidence that the request for payment in the invoice does not satisfy the criteria established in this paragraph.

XI. Technology Transfer

38. In cooperation with the Missouri Department of Agriculture, University of Missouri Agriculture Extension or University of Missouri College of Agriculture, Food and Natural Resources, Defendant will make its technical knowledge and experience with the NGT available to other Missouri confined animal feeding operations.

XII. Environmental Compliance

39. Nothing in this Consent Judgment shall relieve Defendant of its responsibility to comply with applicable state and federal environmental laws, and implementing regulations or the terms of any permit. Following termination of this Consent Judgment, nothing shall prohibit the State from pursuing further relief pursuant to statutory or common law principles.

40. This Consent Judgment does not constitute a permit. The parties agree that Defendant's commitments and obligations pursuant to this Consent Judgment are subject to the permitting process of the Department as required by law.

XIII. Effect Of Settlement and Non-Waiver Provisions

41. Neither the execution of this Consent Judgment nor the payment of the consideration herein specified shall constitute or be construed or represented as an

admission on the part of Defendant of any liability of any kind or nature; nor shall the execution of this Consent Judgment constitute an admission on the part of Defendant that they caused any injury or damage to public health or the environment whether or not alleged in the above described litigation.

XIV. Inspection and Documentation

42. The Plaintiff and its representatives shall have the right of entry into any facility covered by this Consent Judgment, at all reasonable times, upon presentation of credentials, to:

- a. monitor the progress of activities required under this Consent Judgment;
- b. verify any data or information submitted to the Plaintiffs in accordance with the terms of this Consent Judgment;
- c. obtain samples and, upon request, splits of any samples taken by Defendant or their representatives, contractors, or consultants;
- d. obtain documentary evidence, including photographs and similar data; and
- e. assess Defendant's compliance with this Consent Judgment.

43. Upon request, Defendant shall provide the Plaintiff or its authorized representatives split samples of any samples taken by Defendant.

44. Until five years after the termination of this Consent Judgment, Defendant shall retain, and shall instruct its contractors and agents to preserve, all non-identical copies of all documents, records, or other information (including documents, records, or other information in electronic form) in its or its contractors' or agents' possession or

control, or that come into its or its contractors' or agents' possession or control, and that relate in any manner to Defendant's performance of its obligations under this Consent Judgment. This information-retention requirement shall apply regardless of any contrary corporate or institutional policies or procedures. At any time during this information-retention period, upon request by any Plaintiff, Defendant shall provide copies of any documents, records, or other information required to be maintained under this Paragraph.

45. This Consent Judgment in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the Plaintiffs pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of Defendant to maintain documents, records, or other information imposed by applicable federal or state laws, regulations, or permits.

XV. Notices and Submissions

46. All submittals and notices required of Defendant by this Consent Judgment shall be sent to the following individuals, who shall be copied on any electronic mail sent to the Team:

General Counsel
Missouri Department of Natural Resources
P.O. Box 176
Jefferson City, MO 65102-0176

John K. McManus, or his successor
Chief Counsel
Agriculture and Environment Division
Missouri Attorney General's Office
P.O. Box 899
Jefferson City, MO 65102-0899

47. Any responses to submittals and notices required by this Consent Judgment shall be submitted to:

Brian Paulsen
Premium Standard Farms
Hwy 65 N.
Princeton, MO 64673-1086

Jean Paul Bradshaw
Lathrop & Gage LLP
2345 Grand, 24th Floor
Kansas City, Missouri 64113
jpbradshaw@lathropgage.com

48. Parties may change the person on whom delivery is to be made by giving written notice to all other persons designated pursuant to this Section.

49. Within 15 days after any deadline in this consent, Defendant shall provide notice pursuant to this Section of what work has been completed and whether the deadline has been met.

XVI. Modification

50. This Consent Judgment may be modified or amended only by written agreement between the parties and with Court approval or by the Court for good cause shown. No such modification is effective until entered by the Court.

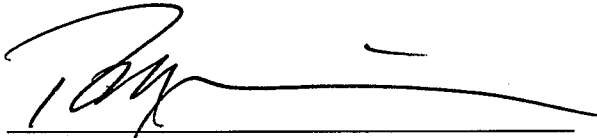
XVII. Termination

51. Defendant may seek termination of this Consent Judgment after Defendant has completed all terms in and work required pursuant to this Consent Judgment. Plaintiff reserves the right to oppose the termination of the Consent Judgment on any grounds related to compliance with this Consent Judgment.

XVIII. Costs

52. Defendant shall pay all Court costs resulting from this action.

This Judgment is entered this 1st Day of September, 2010.



Honorable Robert Schieber
Circuit Judge, Division 15
16th Judicial Circuit

This judgment extending consent judgment is agreed to as to form and content and its entry is requested by the parties.

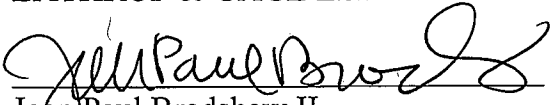
PREMIUM STANDARD FARMS, LLC



Bill Homann, President

Date: 8-31-10

LATHROP & GAGE LLP



Jean Paul Bradshaw II
Counsel for Premium Standard Farms, LLC

Date: 8/31/10

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Jean Paul Bradshaw II
Counsel for Premium Standard Farms, LLC

Date: 8/31/10

MISSOURI ATTORNEY GENERAL'S OFFICE

By: Joseph P. Dandurand
Deputy Attorney General

Date: 9/1/10

Exhibit 1

NEXT GENERATION TECHNOLOGY (NGT) DETERMINATIONS REGARDING THE SUSTAINABLE TECHNOLOGY SYSTEM, BARN SCRAPER SYSTEMS, VEGETATIVE ENVIRONMENTAL BUFFERS, AND BIOFILTER TECHNOLOGY

Submitted by: Management Advisory Team (Team)

Monday, 4/19/10

Introduction:

The Team appreciates Premium Standard Farms' (PSF), citizens', the Environmental Protection Agency's and the State of Missouri's contributions to this Team's progress in seeking viable solutions to the environmental challenge laid out in the Consent Judgment. The Team thanks all those who sent in comments or questions and who participated in the conference call on April 9, 2010. In addition we thank those who participated in the public meeting held in Trenton, Missouri on Tuesday, March 16, 2010. Collectively, these inputs and discussions helped the Team formulate this response to the issues raised and questions asked. For nearly eleven years, this Team has sought to objectively and fairly assess technologies and their environmental impacts as part of the Consent Judgment process. Team decisions have been predominately driven by operational data and analyses conducted in a real-world setting. The Team recognizes that while odor reduction is one of several environmental components identified in the Consent Judgment, odor presents a particularly difficult challenge in terms of accurate measurement, remediation, or source reduction, based on our collective and individual professional experiences. Odor has also proven to be the most challenging aspect of not only the Consent Judgment process, but one of the greatest challenges for Concentrated Animal Feeding Operations nationwide.

Part A. NGT Determinations:

1. Prior NGT Determinations:

All prior NGT determinations by the Team are re-asserted by reference and remain in place.

2. Sustainable Technology System (STS):

Based on the Team's previously identified salient benchmarks, STS qualifies as Next Generation Technology (NGT), conditioned on PSF identifying acceptable operational parameters discussed below. STS scores high on all of our salient criteria (phosphorus management, nitrogen management, pathogen risk reduction, odor reduction from three sources: barns, land application fields and lagoons). The Team regards STS as an evolutionary improvement of the Crystal Peak Farms (CPF) technologies with three major advantages: a) barn odor is reduced significantly relative to CPF, b) spill risks are significantly reduced, and c) over time the lagoons' odor will be reduced as the lagoons shift from anaerobic to facultative. In addition, we anticipate that maintenance will be easier and costs will be lower for STS since traditional barn flushing is eliminated. While the Team did not include an energy component in their salient benchmarks, the production of renewable energy from STS, as well as resulting reduction of greenhouse gas emissions are valuable additional assets.

As stated, STS qualifies as NGT, pending more clearly defined operational parameters in two areas. First, the range of acceptable scraping frequency needs to be stipulated to avoid confusion and potential conflict in the future. The measured odor/odorant reductions on which the NGT determination is predicated on specific design and operational parameters associated with those experimental measurements/data sets. Second, PSF also needs to define a maximum annual acceptable loading of manure to the lagoons. Many of the salient criteria are influenced significantly by the reduction of nutrient loading of the lagoons inherent in STS. The maximum loading figure is

important for future operations and for air and water quality assessments that may be needed. The Team requests that PSF submit their proposals for the acceptable range of scraper frequency and maximum allowable annual loading of lagoons at STS sites within ten days of the receipt of this report to allow this decision to be finalized and memorialized.

3. Barn Scraper Technology:

The Team has determined that the barn scraper technology as installed and field-evaluated at PSF's Valley View Farm qualifies as NGT when combined with the Advanced Nitrification and Denitrification (AND) system. This determination is based on the data presented by Dr. David B. Parker in his report of February 26, 2010, as well as the collective environmental benefits that have been documented for a functional AND system, including, but not limited to, reduced volatile organic compounds (VOC) and emissions of ammonia which impact odor. The Team also benefitted from personal observations of this technology during its site visit to the Valley View farm in November of 2009. Observations made on that day clearly indicated that the technology, as operating, had a marked impact in reducing odor production within the barn with the scraper system as compared to the nearby flush barn. The Team's performance criterion for barn odor reduction is a reduction of at least 70% relative to an untreated barn using a flushing system. Therefore the key measurements on which the Team's determination rest are the Detection Threshold (DT) and Recognition Threshold (RT) measurements. Dr. Parker's measurements show that this criterion is met. Similarly to the decision on STS, the Team requires that the range of scraper operational frequency be defined more clearly in order to finalize this decision.

Part B. Discussion of NGT Determinations Relative to Received Comments:

1. Barn Scraper Systems as a component of NGT:

The Team received considerable input from various stakeholders regarding the environmental performance measured and documented in the report by Dr. Dave Parker, entitled, "Comparison of Odor, Total Reduced Sulfur and VOC Concentrations in Exhaust of Scraper and Flush Swine Finisher Barns" dated February 26, 2010. The following provides a discussion of the technical issues and the basis of conclusions made by the Team relative to the above NGT determinations. First, the Team understands and accepts the concerns raised about whether the odor emission measurements were taken at times that adequately represent the treatment (scraper technology) vs. the flush barn which served as a control in this study. This was one of the most critical issues to address in our consideration of Dr. Parker's results. The samples used to determine Detection Threshold (DT) and Recognition Threshold (RT) were taken over 2-3 minutes at two times during the flush or scrape cycle. The Team notes that the DT and RT measurements did not vary dramatically in the scraper barns between the "during scrape" and "between scrape" samples. The sampling time (2-3 minutes) does partially protect against oversampling the odor peak associated with flushing as it would average some of the odor values lower than the peak in each measurement. Another source of possible bias that would favor scrapers would be if the sampling missed the lower odor values assumed to occur during the "between flush" period, but instead was sampling part of the "during flush" time higher values. The data collected by Dr. Parker show a "during flush" to "between flush" ratio of about 1.6. These data suggest that Dr. Parker did capture a difference in odor between two parts of the flush cycle. Based on the ratio between the "during flush" and "between flush" values, the Team does not believe that a significant bias has been introduced into the analysis.

A definitive resolution of this question would come from an extended period of intense, semi-continuous sampling, which is extremely difficult to accomplish with odor measurements. The Team does not recommend further, significant delays in implementation of Next Generation Technology

based on this remaining uncertainty. Dr. Parker responded repeatedly to Team guidance to mitigate against a biased result, and The Team has no indication that Dr. Parker did anything to bias his results.

The Team further notes that after critical review and with input from stakeholders to the Consent Judgment it did approve the experiment design and believes the experimental design substantially reduced the possibility of a bias caused by ventilation rates. Samples were taken as closely in time as logistically possible and the order of sampling was alternated to guard against systematic bias due to sampling time or sequence.

Dr. Parker also explained optional models he used for addressing the possibility of seasonal variability of results. The small amount of variation produced by two significantly different models of seasonal variation shows the choice of model is unlikely to affect the odor reduction calculations in any significant manner. The issue is whether data collected at the ventilation rates during the time of the study can be applied to other ventilation rates used over the course of the year. The data collection instruments were located within approximately one foot of the barn fans and thus in the exhaust airstream. This location would essentially eliminate the possibility of outside air diluting the barn exhaust air being sampled. While in-barn conditions (and therefore source conditions) do vary over the course of the annual climate cycle and, in fact, under diurnal changes in weather, these are far less than those variations experienced outside of the barn or for ambient conditions. The limited variability of in-barn conditions does not support a conclusion that ventilation rates will cause the scraper system effectiveness to change. In other words, while the odor concentrations likely will change over the course of a few hours because of ventilation changes, the odor reduction percentages will be relatively unaffected by these changes in ventilation rate. The Team considered Parker's modeled results as secondary to his primary concentration-based results in his February 26, 2010 report as a basis for decision making.

The Team agrees that Parker's analysis regarding turnover of hog inventory within barns and odor levels during the turnover period may be questionable. The assumptions that went into this section of the analysis are unable to be tested or proved after the fact and thus cannot be used as the basis of decision-making. Similarly, the Team notes that while PSF has a legitimate concern about pipe freezing during the winter within the flush barns, and hence practices continual flushing, the case for continuing to flush the barns during the warmer months while there are no pigs in the barn has not been examined critically by the Team.

The Total Reduced Sulfur (TRS) data, as measured using a Jerome meter, proved valuable for allowing the Team to understand the mechanism through which odor was reduced by the scraper system. The Team agrees with some of the arguments raised concerning the use of these data to provide a broader interpretation of the data. However, the TRS data's value beyond providing an explanation for the odor reductions is harder to assess without spending a considerable effort correlating these results with those of the Dr. Albert J. Heber et al., 2004 report, or beginning a new period of sampling prior to decision-making. These options were considered, but determined to not be necessary. Two fundamental questions regarding this topic ensued from the discussion during the April 9, 2010 conference call.

"1. Would the Team be able to make an informed decision on the scraper technology without the Total Reduced Sulfur data?" The answer to this question is clearly, "yes."

The data that are most pertinent and critical to the decision to endorse scrapers are the odor concentration values as measured by DT and RT, as mentioned above. While the TRS data were used to assess the applicability of these data collected to other times of the year, the

Team could assess the effectiveness of the scraper system directly from the odor data collected by Dr. Parker.

"2. Do the TRS data in any way disagree or cast doubts on the odor reduction data recorded as DT or RT?" The answer to this question is, "no." The TRS data show a greater reduction than either of the two odor concentration data sets. Therefore, these data support the decision rather than providing a counter-indication.

2. Merits of Vegetative Environmental Buffers:

There have been considerable input and questions regarding the Team's decision not to accord NGT status to Vegetative Environmental Buffers (VEBs). The measured odor emission data available from the Hedgewood Farm for VEBs was assessed with the same critical review as that referenced for the Scraper System. Based on the data presented in November, 2009, VEBs were determined not to meet the source reduction of odor emissions necessary to meet the previously established odor performance standard for NGT. The only locations where VEB's approach the 70% odor reduction performance standard developed by the Team are locations within and directly behind the VEB's. These are not the locations that most accurately predict the effectiveness of VEB's on reducing odor for receptors. For the Team to accept VEB's as an acceptable alternative for barn odor control, PSF would need to produce third party data that shows that VEB's meet the performance standard of at least 70% reduction in odor under an experimental design and protocol approved in advance by the Team. Alternatively, PSF would have to show that VEB's, in coordination with another technology, meet this performance standard. The Team does not oppose VEB's or their installation; in prior released Team minutes the environmental value of VEBs has been recognized and noted. However, VEB's alone can not be endorsed as meeting the NGT performance standard for barn odor control at this time based on the scientific data available to us.

PART C: Issues/Questions and Operational Considerations submitted by PSF on April 6, 2010:

1. Matrix Approach to NGT Implementation:

The Team stands by its prior decisions to use the matrix and the analysis behind the matrix as the basis for determinations on odor control. The Team has no plans to revisit either the analysis or the matrix receptor score used as the basis for its recommendations on barn odor control. This leaves 53 sets of barns using the AND system (excluding the Hedgewood and Somerset Farms where all the barn sites will have scrapers installed as part of the Sustainable Technology System) that require barn odor control. These are listed in Table 1 at the end of this report.

2. Odor receptor and home ownership status:

The Team is willing to accept that a home/property owned by PSF can be excluded from consideration with regard to odor control. If any of those homes change ownership, then the home and its inhabitants should be afforded the level of protection inherent in the Team's decisions with regard to the use of the matrix with regard to odor receptors. However, the Team does not support exempting other households from consideration. The decisions of the Team were and are based on conditions affecting all those living at a given receptor, not the identity, home ownership, or employment status of individuals residing in homes not owned by PSF. Similarly, the Team is unwilling to make a tie between a manure spreading agreements/contracts and odor control via application of the matrix approach.

3. Sow Farms:

The Team is willing to consider eliminating the barn odor control requirement at Badger/Wolf and Terre Haute on the condition there are compelling documented operational factors that warrant reconsideration of the matrix results for those two farms. The reader is reminded that the matrix and its application to PSF barns was the result of a careful and meticulous period of examinations by the Team. It was not designed to be interpreted with other data or analyses and the Team is extremely hesitant to do so. The Team requests that any operational criteria that justify exempting these barns from the odor control requirement be submitted within ten days of the receipt of this report.

4. Implementation Schedule:

The Team requests that PSF develop a schedule for implementation of the recommendations of this and previous meetings as soon as possible. While the Team realizes that this may be resolved in coordination with the Attorney General's Office, EPA and other parties, we see no reason to delay getting these technologies in place. The Team is willing to help develop this schedule, but will take no action that precludes action by the parties to the Consent Judgments.

5. Continued Testing of Vertical Biofilters:

The Team encourages PSF to operate and test the biofilter installed by Dr. Nicolai to determine odor concentrations and emissions at the two barn odor control systems over the course of at least six months. We recognize that this may not affect the Consent Judgment resolution; however it could provide valuable support for the expectation that scrapers may be a more effective odor control at moderate to high ventilation rates as compared to a biofilter design that does not treat all of the exhaust air at those ventilation rates.

6. Continuing Team Actions:

The Team will be presenting a less technical review of the progress made and the technologies implemented during the past decade in a separate document.

Table 1. Barn sets requiring NGT odor control subject to determinations in this report.

Farms:	Sites within Farms:
• Badger/Wolf/Brantley	Wolf 14A&B
• Green Hills	10, 11
• Homan	17, 18, 19, 20, 21, 22, 23
• Locust Ridge	3, 5, 6, 7, 9
• Ruckman	9, 10, 11, 12, 13, 14, 15, 16, 17
• South Meadows	1, 2, 3, 4, 5, 6, 7
• Valley View	2, 5, 7
• Whitetail	1, 2, 3, 4, 5, 6, 7, 8, 10
• Terre Haute	1, 2, 5, 6, 7, 11, 13, 14, Terre Haute Nursery, Cooley Nursery

Note: All the barns at Hedgewood and Somerset farms will have scrapers installed as part of the Sustainable Technology System.

Exhibit 2

NEXT GENERATION TECHNOLOGY (NGT) – Resolution of Operational Considerations

Submitted by: Management Advisory Team (Team)

Monday, 5/17/10

a. Operational Frequency of Scraper System

PSF has stated its intent to operate the scraper systems on a two-hour cycle. This is acceptable to the Team. Because no exemptions were noted in the PSF memo of April 30, 2010, the Team expects the system to run continuously, except when barns are emptied of pigs during the turn. This time when barns are not occupied provides PSF a periodic window for preventative maintenance activities on the systems.

b. Operation's Manual

PSF has historically created documents to guide operations, maintenance and other procedures. While the Team supports adding a section on scrapers to the operations manual, the Team recommends that the Missouri Department of Resources is a better choice for review of such a document, if required.

c. Lagoon Nutrient Loading

The Team supports the limits on nutrient loading recommended by PSF. The Team suggested an annual limit as a way to ensure that the lagoons remain facultative and produce greatly reduced levels of odor. The proposal to limit loading to the lagoon to 12 days annually is anticipated to accomplish this, based on the data and analyses presented by PSF. Once scrapers are implemented and the existing lagoons cease to be loaded, the distribution of the days on which loading occurs is less important than the total loading annually in determining odor production and water quality of the lagoons. Therefore, only an annual limit is necessary.

d. Exemptions from the Barn Odor Control Requirement

The Team recognizes that the boar barns are air conditioned and thus the Team is comfortable exempting these barns from the requirement for odor control. Based on the information available, there is no compelling operational rationale to exempt the other barns from this requirement.

e. Schedule

The Team will not comment on the proposed implementation schedule at this time. In its April 2010 minutes, the Team committed itself to take no action that would preclude action by any parties to the Consent Judgment. Since the proposed schedule extends beyond July 31, 2010, the Team is hesitant to make any declaration that may hinder potential negotiations between PSF and the State of Missouri. The Team will comment on the schedule for implementation only if requested by and with the support of all parties to the Judgment.